

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MISSOURI PRIMATE FOUNDATION,)
et al.,)

Plaintiffs and)
Counterclaim Defendants,)

vs.)

Case No. 4:16 CV 2163 CDP

PEOPLE FOR THE ETHICAL)
TREATMENT OF ANIMALS, INC.,)
et al.,)

Defendants and Counterclaim)
Plaintiffs.)

MEMORANDUM AND ORDER

This matter is before the Court on Counterclaim Defendant Tonia Haddix's Pro Se Motion to Dismiss [ECF 240]. Because the motion attempts to relitigate issues already decided by this Court and is otherwise procedurally infirm, the motion is denied.

Background

Haddix was joined as a counterclaim defendant by the Court's Order dated March 9, 2020 because that counterclaim defendant Connie Casey had transferred ownership rights to the at-issue chimpanzees to Haddix.¹ ECF 225. Haddix

¹ For a more detailed discussion of the facts surrounding Haddix's joinder, *see* ECF 225 pg. 4-5.

answered PETA's Amended Complaint on May 12, 2020. ECF 236. Because Haddix filed the instant motion after filing her answer, the motion is construed as if it were a motion for judgment on the pleadings under Rules 12(h)(3) and 12(c), Fed. R. Civ. P. *See Kettermann v. Bank of Am. Corp.*, No. 4:18-CV-952 JAR, 2019 WL 1275063, at *2 (E.D. Mo. Mar. 20, 2019).

“[W]hen deciding a motion for judgment on the pleadings, the court applies the same standard used for a motion to dismiss for failure to state a claim under Rule 12(b)(6).” *Bryant v. Cty. of Cape Girardeau*, No. 1:18-CV-117 RLW, 2019 WL 6219861, at *1 (E.D. Mo. Nov. 21, 2019). The purpose of a motion to dismiss under Rule 12(b)(6), Fed. R. Civ. P., is to test the legal sufficiency of the complaint. “When considering a 12(b)(6) motion, the court assumes that the factual allegations in the complaint are true, and construes them in favor of the plaintiff.” *Neitzke v. Williams*, 490 U.S. 319, 326–27 (1989); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). The Court “may not grant judgment on the pleadings unless ‘the moving party has clearly established that no material issue of fact remains and [she] is entitled to judgment as a matter of law.’” *Waldron v. Boeing Co.*, 388 F.3d 591, 593 (8th Cir. 2004).

When a party moves to dismiss under Rule 12(b)(1), the Court first determines whether the movant presents a “facial attack” or “factual attack” on the Court’s jurisdiction. *See Osborn v. United States*, 918 F.3d 724, 729 n.6 (8th Cir.

1990). Haddix appears to present both a factual and facial attack on the Court’s jurisdiction, as she contests both the sufficiency of PETA’s pleadings and the veracity of the facts alleged in support of subject matter jurisdiction. *See Davis v. Anthony, Inc.*, 886 F.3d 674, 679 (8th Cir. 2018). However, because the issues she raises have already been addressed by this Court, and because Haddix did not file any documentary evidence to support her allegations, her motion will be summarily denied.

Discussion

Haddix first attacks the standing of Counterclaim Plaintiffs PETA and Angela Scott. Haddix contends that Scott’s purported interest in the case is to “visit the animals if the animals’ conditions were improved;” she then alleges, without evidence, that the conditions have improved, such that Scott’s interest in the case is no longer cognizable. Haddix further alleges—again, without evidence—that Scott “cannot leave her home state due to court order,” and that Scott accordingly no longer meets the ‘injury in fact’ requirement because her injury is not “actual or imminent.” Relatedly, Haddix alleges that PETA “have no knowledge of the animals current living conditions” and that PETA cannot “manufacture standing by expending resources to avoid a speculative, hypothetical

harm.” ECF 240. For all these reasons, Haddix contends that counterclaim plaintiffs no longer retain standing to sue.²

Haddix’s standing claims resemble the arguments raised by counterclaim defendant Connie Casey in her Motion to Dismiss [ECF 29], which I denied on March 22, 2018. *See* ECF 56. In that Order, I determined that Scott had standing to sue under the Endangered Species Act due to her “strong interest in viewing animals in living conditions that do not violate the ESA,” and that PETA had organizational standing by virtue of Scott’s cognizable interest. *See id.* at 6. Haddix has not presented any factual or legal basis which would justify a different conclusion here. Both of her specious allegations related to Scott are entirely unsupported by evidence, as is her allegation related to PETA’s knowledge of the chimpanzees’ present living conditions; construing the facts alleged in the complaint in the counterclaim plaintiffs’ favor, they retain standing to sue, just as they did over two years ago when I addressed this same question.

I will deny Haddix’s challenge to the merits of counterclaim plaintiffs’ complaint for essentially the same reasons. The question at this stage is not whether the counterclaim plaintiffs can prove their case, nor whether Haddix can


² Haddix also asserts in her motion that because PETA allegedly “has a penchant for filing ESA-related lawsuits,” “obliterate[s] all animals in captivity,” and “use[s] the [ESA] as a weapon against private owners and small private zoos,” that they lack standing to sue under the ESA. Even if true, these inflammatory, unsupported allegations simply have no bearing on the legal question of PETA’s standing. Her motion is denied on these grounds.

disprove their allegations—the factual allegations in the complaint are presumed to be true. Accordingly, the only question here concerns whether the complaint states a valid claim under the governing statute, and the allegations against Haddix are factually and legally identical to the allegations I have already upheld as stating a valid claim under the ESA. *See* ECF 65 at pg. 10-11. Haddix’s motion is thus denied to the extent she seeks dismissal for failure to state a claim.

Finally, Haddix essentially contends that removing the at-issue chimpanzees from their present facility would cause them “harm” under the ESA, and that the placement of the chimpanzees in alternative facilities may prevent them from breeding, contrary to the intent of the ESA; for these reasons, Haddix seeks dismissal of the lawsuit in its entirety. These allegations involve factual questions which are unrelated to the legal sufficiency of the complaint and are not properly addressed at this stage in the proceedings. Haddix’s motion is denied on these grounds as well.

As there are no remaining issues,

IT IS HEREBY ORDERED that Tonia Haddix’s Motion to Dismiss [ECF 240] is **DENIED**.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 24th day of August, 2020.